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February 3, 2022

Mr. Steven J. Kaiser
Cleary Gottlieb Steen & Hamilton LLP
2122 Pennsylvania Avenue, NW
Washington, DC 20037-3229

Dear Mr. Kaiser:

We received your letter dated January 28, 2022 and thank you for same. This responsive communication will briefly address both our efforts to respond to your requests and your obligation to respond to our requests.

Our Efforts

Regarding our efforts to respond to your requests, we are diligently working to satisfy those that require satisfaction. Indeed, we identified three broad concerns from your December 22, 2021 letter:

- (1) Technical concerns brought under ECF 97-2;
- (2) That the Defendants received several pages as faded or shrunken and not reasonably viewable (including pages 42-47 and 83 of American Spirit's Responses and most of the documents in Jeff & Craig's Responses); and

Steven J. Kaiser
February 3, 2022
Page 2

(3) That the Defendants did not receive some documents referenced in Ms. Haygood's Responses.

Regarding the first, we would be wise to recall that our proposed ESI Protocol (ECF No. 97-2) was jointly proposed to the Court as an order but never signed by the Court as an order. Neither was it filed as a stipulation under Rule 29(b). Consequently, it seems the default Federal Rules govern. Specifically, Rule 34(b)(2)(E)(i) addresses the production of electronically stored information. Under it, a party may "produce documents as they are kept in the usual course of business." Of course, our professional duties of honesty and candor compel us to abide by the proposed Order as if it were an issued order or a filed stipulation. Consequently, we will do our best. For example, regarding your January 28, 2022 at nt. 1 communication indicating the follow-up Haygood production may still not jibe with our proposed protocol, could you be more specific? Is it only metadata that you would like, or something more? If you specify, we are happy to do our best.

Regarding the second and third concerns, we expect to send/resend those as soon as possible. We also expect to send additional documents from the American Spirit Plaintiffs shortly.

Your Obligation

As we mentioned in our January 28th letter to you, several Defendants have not complied with Rule 34(b)(2)(A) or the terminated Protective Order requiring responses within 30 days. Indeed, the Defendants evidently failed to submit *any* documents previously redacted or withheld pursuant to the terminated Protective Order. More

Steven J. Kaiser
February 3, 2022
Page 3

concerning, several Defendants have failed to submit *any* documents in response to our February 2021 requests *whatsoever*. Remember, the Court denied in part the Defendants' motions to dismiss. As such, your responses are long overdue.

By way of reiteration, we ask that you please advise us of your intentions today or your desire to confer further. **Otherwise, please consider this our consultation in advance of a Motion to Compel and for Sanctions.**

Sincerely yours,

LAW OFFICES
FALANGA & CHALKER

/s/ Robert A. Falanga
Robert A. Falanga
Interim Lead Class Counsel

/s/ Kobelah Svensen Bennah
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